No. 90-849

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

COUNTY OF LOS ANGELES, *et al.*,

Petitioners,

v.

YOLANDA GARZA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY OF PETITIONERS TO BRIEFS IN OPPOSITION

DEWITT W. CLINTON
COUNTY COUNSEL OF
LOS ANGELES
MARY WAWRO
SENIOR ASSISTANT
COUNTY COUNSEL
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-1811

RICHARD K. SIMON
LEE L. BLACKMAN
ERICH R. LUSCHEI
McDERMOTT, WILL & EMERY
2029 Century Park East
Suite 3800
Los Angeles, California 90067-2917
Telephone: (213) 277-4110

JOHN E. McDERMOTT
660 South Figueroa Street
Suite 2300
Los Angeles, California 90017
Telephone: (213) 955-4600

Counsel of Record for Petitioners

JOHN E. McDERMOTT
RICHARD C. FIELD
EVAN M. EISLAND
CADWALADER, WICKERSHAM
& TAFT
660 South Figueroa Street
Suite 2300
Los Angeles, California 90017
Telephone: (213) 955-4600

GLEN D. NAGER
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
Telephone: (202) 879-3939

Counsel for Petitioners
County of Los Angeles, et al.

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I. INTRODUCTION

The County of Los Angeles, and three of its five Supervisors, urge this Court to grant its Petition for Writ of Certiorari, notwithstanding denial of its stay application. Respondents' briefs essentially ignore a fundamental demographic fact – that immigration over the last two decades has produced an unprecedented situation in California and the southwest where concentrations of noncitizens will result in significant political redistricting consequences never confronted by courts before. The fact that reapportionment has been based in the past on total population or that 49 of 50 states require or permit use of total population in redistricting only highlights, rather than lessens, the importance of this case. As Judge Kozinski says, this is "an important and difficult case." (App. A-47.) It deserves Supreme Court review.[1]

II. THE DISTRICT COURT REMEDIAL PLAN IS UNCONSTITUTIONAL

A. The Remedial Plan Violates The One-Person, One-Vote Rule

The County contends that the district court remedial plan violates the one-person, one-vote rule of *Reynolds v. Sims*, 377 U.S. 533 (1964) because it consists of five districts equal in total population but grossly unequal in citizens, voting age citizens and registered voters. There are over twice as many citizens and registered voters in District 5 as in District 1. Respondents dispute the County's interpretation of *Reynolds*. Their legal analysis, however, is overwhelmed by the trenchant and careful review of this Court's prior reapportionment decisions by Judge Kozinski who concluded that the County has the better of the argument, that where the apportionment bases conflict districts should be equal in citizens. "It is very difficult, ... to read the Supreme Court's pronouncements in this area without concluding that what lies at the core of one person, one vote is the principle of electoral equality, not that of equality of representation." (App. A-35.)

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[1] The Ninth Circuit has denied the County's Petition for Rehearing and Suggestion for Rehearing En Banc. (App. AA-1, AA- 2.) ("App. AA" refers to the supplemental appendix to this reply brief, nine copies of which have been lodged with the Clerk of the Court. "App. A" refers to the appendix initially filed by petitioners. An evidentiary appendix is annexed hereto. *See* n. 4, *infra*.)

The Garza respondents mischaracterize the County's position when they say that the County asserts that citizenship always must be used. The County could not have been clearer that, in most states where there are not large concentrations of noncitizens, the use of total population will be unobjectionable. The County contends only that, where as here significant numbers of noncitizens make total population a poor predictor of eligible voters, a more accurate measure of actual voting strength must be used in satisfying Reynolds' one-person, one-vote standard, such as citizenship or voting age citizenship. As Judge Kozinski observed (App. A-35), that is the logical and unavoidable conclusion of any fair review of prior reapportionment decisions. *See Gaffney v. Cummings*, 412 U.S. 735, 746-47 (1973); *Wyche v. Madison Parish Police Jury*, 635 F.2d 1151, 1163 (5th Cir. 1981).

Respondents acknowledge that citizenship is a permissible apportionment base but claim that this Court has never required it. They cite *Burns v. Richardson*, 384 U.S. 73 (1966) as support for the argument that the choice of apportionment base is for each state to decide and claim that California has chosen to require total population as the apportionment base for local redistricting. Yet this Court has interfered with state laws on the composition of the electorate when constitutional principles have been offended, see *Carrington v. Rash*, 380 U.S. 89 (1965), and, as Judge Kozinski observed (App. A-45), obviously any state law would have to yield to federal constitutional commands, at least as applied to those areas within a state (like Los Angeles County) where the presence of noncitizens would produce the injustice that occurs here.

In addition, respondents are wrong when they assert that California Elections Code §35000 (App. A-359) precludes redistricting on the basis of citizenship. The word "population figures" cannot be read so narrowly as plaintiffs suggest, as if it were necessarily equivalent in meaning to "total population." The phrase "population figures" is a loose construction that would encompass all figures reported in the federal census, such as those for age, citizenship and ethnicity. Thus, citizenship data from the census are "population figures," or one kind of "population figures."

In *WMCA, Inc. v. Lomenzo*, 238 F.Supp. 916 (1965), upholding citizenship as a permissible apportionment base, the court gave the same meaning to the word "population" as suggested above:

> "It is true that in a series of decisions [accompanying *Reynolds*], the Supreme Court repeatedly stated its fundamental holding in terms of equality of "population." But a crucial passage in *Reynolds* . . . convinces us that "population" may be the total number of citizens as well as the total number of residents. . . .[2]
>
> The opinion of *WMCA, Inc. v. Lomenzo*, [377 U.S. 633 (1964)], confirms this interpretation.

238 F.Supp. at 925, *aff'd per curiam*, 382 U.S. 4 (1965) (Justice Harlan referred to the decision as "eminently correct"). If *Reynolds*' population equality requirement can be read to include within its meaning citizenship population as well as total population, so can the words "population figures" and "population" in Elections Code §35000. The lower court rulings that §35000 *requires* "total" population figures (the word "total" does not appear in the statute) are wrong as a matter of law. (*See*, App. A-148, No. 55)[3]

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[2] The Supreme Court stated:

> [T]he Equal Protection Clause requires that a State . . . construct districts . . . as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. [*Reynolds*, 377 U.S. at 577]

[3] Respondents also suggest that apportioning on citizenship would conflict with Congressional apportionment but this Court already rejected that argument in *Reynolds v. Sims*, 377 U.S. at 571-77. As Judge Kozinski noted, "arguments based on the 'federal analogy' are 'inapposite and irrelevant to state legislative redistricting schemes', *Id.* at 573, ... Congressional apportionments are governed by Section 2 of the fourteenth amendment, which makes total population the apportionment base; it says nothing about state apportionments. If this provision were meant to govern state legislative apportionments, the principle of one person one vote, based on a separate part of the fourteenth amendment, would be superfluous." (App. A-41, n. 15.)

Respondents' next argument is the specious one that the County used total population for its proposed remedial plan below, but the district court already had rejected the County's citizenship apportionment base argument as part of its liability decision and the County had no choice but to submit a plan using total population because any other plan obviously would have been rejected. Nor is it fair to criticize the County's 1981 plan, because citizenship data was not available then and because no one ever reexamined the apportionment base issue until after this litigation commenced. Nor is it accurate to state that the County wants another election under its 1981 plan; assuming the liability decision is not overturned, it wants a remedy that is constitutional.

The choice of apportionment base, because of the immigration of the 70's and 80's, is the redistricting issue of the 90's, especially for California and the southwest. This case provides a full record and a perfect opportunity to resolve the issue before the release of the 1990 census compels many political jurisdictions in this country to confront it.

B. The Court Of Appeals Incorrectly Assumed There Was No Way To Harmonize The Principles Of Representational And Electoral Equality

It is undisputed that five equipopulous districts can be drawn without such gross variances in citizens, voting age citizens and registered voters. Surely, there is at least an obligation to minimize those variances, if total population is to be used as the apportionment base, an approach that may have avoided the need to choose between total population and citizenship, and also would avoid any presumed conflict with California Elections Code §35000.

Although this was a major focus of the dissent of Judge Kozinski who would have remanded for further findings, the Ninth Circuit did not address this issue, and respondents nearly ignore it in their opposition briefs. The USA does not even mention it, while Garza misrepresents the County's position altogether at p. 20, fn. 22. Garza respondents are flatly wrong when they say there was no evidence that a plan could be drawn with equipopulous districts with far smaller variances in citizens and registered voters than the remedial plan (which *is* the County's position) or that the argument was not raised below. (See, App. A-318 to A-335, *nb.* A-330 *et seq.*) Indeed, it was the very issue Judge Kozinski showcased in his dissent.

The Ninth Circuit's failure to address this issue is reversible error, and the importance of clarifying that jurisdictions should attempt

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Respondents raise the practical issue that many jurisdictions redistrict before the Census Bureau publishes citizenship data, but the USA "proved" Hispanic citizenship levels in this case by extrapolations from registered voter lists using Spanish surnames from the Census Bureau's Index of Spanish surnames, a procedure that can be easily repeated in preference to using stale decennial citizenship estimates. The USA's position is at war with its own proof in this case. In any event, states can alter their statutes and jurisdictions can redistrict again when citizenship data becomes available if (and only if) that data indicates a problem of the sort reflected by the remedial plan in this case.

to harmonize the principles of representational and electoral equality where possible is a compelling basis for granting certiorari.

III. THE INTENTIONAL DISCRIMINATION DETERMINATION IS FUNDAMENTALLY FLAWED

The third reason why this Court should consider this matter is that the Ninth Circuit opinion upholding the district court's conclusion of intentional racial discrimination is fundamentally flawed in a way that raises important unresolved issues about the proper definition of a discriminatory purpose in a context where race neutral political judgments resulted in a failure to take affirmative action to remedy the effects of theretofore unchallenged prior redistrictings undertaken by different Boards. Race neutral political judgments which fail to improve minority voting effectiveness are not invidiously discriminatory. See *Burns, supra*, 384 U.S. at 89 and n. 16; *McMillan v. Escambia County*, 688 F.2d 960, 969 n. 19 (5th Cir. 1982), *vacated and remanded*, 466 U.S. 48 (1984), *aff'd on remand*, 748 F.2d 1037, 1046 (5th Cir. 1984).

This is not a classic hostile, prejudiced or invidious discrimination case, because the testimony and the district court's findings clearly preclude such a characterization. The district court plainly concluded that the Board acted for a racially discriminatory purpose *because and only because* it had knowledge of the racial consequences of its action. This finding of a "volitional intent" is plainly inadequate to support the conclusion that the Board's purpose was discriminatory under *Personnel Administrator v. Feeney*, 442 U.S. 256 (1979) and other decisions of this Court, which clearly require a finding that racial harm was a goal or desired consequence of the action. The lower courts adopted a standard of impermissible conduct which would invalidate every politically influenced redistricting that could result, even decades later, in the dilution of minority voter influence — even when it is undisputed that there was no racial animus. This is contrary to this Court's holding in *Feeney*.

Had the district court found that which it did not find, namely that the Board acted for *the purpose* of bringing about discriminatory effects, it nonetheless would have erred because the evidence in this case, voluminous though it may be, will simply not support this inference. Viewed in the light most favorable to

the plaintiffs, the evidence both with regard to the 1959-1971 and the 1981 redistrictings cumulatively shows at most that the Board acted volitionally, that is, with knowledge of consequences. In fact, most of the evidence does not even show this much.*

Even to the extent that the evidence might support an inference of actions taken with knowledge of effects, such evidence alone is insufficient to support an inference that the effects were desired as goals, because in every instance there are equally plausible nonracial goal explanations, the plaintiff had the burden of proving purposeful discrimination under *Washington v. Davis*, 426 U.S. 229 (1976), and evidence of racially disproportionate effects alone does not discharge this burden. *See Mobile v. Bolden*, 446 U.S. 55, 70 (1980); *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977); *Washington v. Davis*. If an inference of discriminatory purpose can be properly drawn from evidence of racially disproportionate effects in combination with expert testimony that the inference is "plausible," *Washington v. Davis* has effectively been overruled, because such expert testimony always will be forthcoming.

A. The 1959-71 Discriminatory Purpose Finding

The finding of a 1959-1971 purpose to fragment Hispanics must be put in the context that during those years the Hispanic population was sufficiently small and sufficiently spread out that acting on a purpose to "fragment" was not likely to produce any significant discriminatory effect. The Hispanic population was little more than seven percent of the County in 1950 (App. A-60, Finding 30) and increased only minimally, to about 9 and a half percent

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* The district court's findings contain no record citations. The evidentiary appendix annexed hereto, attempts to remedy this deficiency by summarizing, with record citations, the evidence which supports each of the district court's intentional discrimination findings. The County is not attempting simply to reargue the facts, but is instead urging that independent review of the record by this Court is necessary to prevent evasion of the rules announced in *Washington v. Davis*, 426 U.S. 229 (1976) and *City of Mobile v. Bolden*, 446 U.S. 55 (1980), and will also establish that the district court's findings are clearly erroneous. A review of the evidentiary appendix will reveal that the vast majority of evidence in this case, especially with regard to events prior to 1981, establishes only the racial effects of the Board's prior redistrictings, which alone are insufficient under *Washington* and all of the other decisions of this Court voiding electoral districting schemes.

by 1960. (Id., Finding 31.) Therefore, the 1959 redistricting hardly could have had any material dilutive impact on Hispanic voting power. The Hispanic population increased to about 18.3 percent of the County's population, by 1970. (App. A-61, Finding 35.) Indeed, two-thirds of all Hispanics in Los Angeles County today have arrived in the last 20 years, making claims of deliberate fragmentation in 1950, 1960 and 1970 not very credible. Thus, the district court drew the dubious inference that the Board in the 1959-71 redistrictings acted for a purpose that, to put it mildly, was unlikely of accomplishment. In short, the district lines in place at the time of the redistricting in 1981 were drawn long before the Hispanic community had achieved a size which would allow for significant influence, let alone the potential to elect chosen candidates to the Board of Supervisors.

Judge Kozinski relies to a great extent on the district court's findings that prior to 1981 the board intentionally discriminated against Hispanics in districting. (App. A-30 to A-31.) His analysis is clearly erroneous. First, the district court's pre-1981 findings violate the longstanding rule of *Washington v. Davis*, 426 U.S. 229 (1976), that intention cannot be inferred solely from discriminatory effect. Here the only evidence of discriminatory intention was the effects of pre-1981 redistrictings, all of which had equally plausible nonracial explanations, and the opinions of experts, supplying no additional facts, speculating as to the possible causes of those effects. The County submits that it is not credible to assert that the Board was motivated to discriminate against a group that was far too small and disproportionately non-voter at the time to represent any sort of political threat. Also, the presumption relied on by Judge Kozinski and perhaps implicitly by the panel does not erase the district court's exonerating findings, and is moreover inconsistent with *Davis v. Bandemer*, 478 U.S. 109 (1986).

B. The 1981 Discriminatory Purpose Finding

With regard to the 1981 purpose, the only purpose issue that has independent legal significance, not only will the evidence not support a finding that the Board's redistricting was undertaken because it desired to produce the effect of Hispanic fragmentation or vote dilution, but also the court concluded that this was not true as a matter of fact. The court found that the Board in

1981 approached redistricting with exactly the opposite racial "objective" in mind, that is "to protect their incumbencies while increasing Hispanic voting strength." (App. A-54 to A-55.) This finding obviously is inconsistent with the interpretation of the district court's discriminatory purpose finding urged by the respondents.

The rational urged by respondents – that the court's exculpatory finding is remedied by the further finding that protection of incumbencies was "inextricably linked to the continued fragmentation of the Hispanic Core" is clearly and flatly inconsistent with *Feeney*. In *Feeney* itself, the Massachusetts legislature knew that creating an employment preference for veterans would produce a discriminatory effect against women, and one might equally aptly say, therefore, that it knew that preferring veterans was "inextricably linked" to disproportionately disadvantaging women and thus it acted for a discriminatory purpose. But this is transparent nonsense and is exactly the sort of purpose inference that this Court rejected in *Feeney*.

Properly viewed, then, the district court's "findings" of discrimination are either flawed conclusions of law or clearly erroneous findings.

IV. THE NINTH CIRCUIT ERRED IN AFFIRMING A *THORNBURG* REMEDY WITHOUT PROOF OF *THORNBURG* EFFECTS

The County contends that to establish a constitutional vote dilution claim, a plaintiff must prove both a discriminatory purpose and discriminatory effects of the sort required by *Thornburg v. Gingles*, 478 U.S. 30 (1986). The USA acknowledges that it must prove both discriminatory purpose and discriminatory effects, but argues that it need not prove *Thornburg* effects, but something less, to establish a constitutional claim.

Yet constitutional cases before Section 2 was amended in 1982 already were defining dilution to include what later became the *Thornburg* preconditions. (Cert. Pet. pp. 23-25.) By definition, dilution, in the sense of an ability to elect, requires proof of effective voting majorities and polarized voting, the *Thornburg* requirements. Two district courts in the Ninth Circuit already have rejected respondents' argument. *Skorepa v. City of Chula Vista*,

723 F.Supp. 1384 (S.D. Cal. 1989); *Badillo v. City of Stockton*, CIV No. S-87-1726 EJG, slip op. (E.D. Cal. Jan. 9, 1990) (App. A-348.). It also requires proof of unresponsiveness.[5] The USA citations to the language of Section 2 and to *White v. Regester*, 412 U.S. 755 (1973), are to no avail, because both preceded *Thornburg*.[6]

This issue of the effects required to prove a constitutional vote dilution claim is the fourth reason why this Court should take this case, because an effects requirement of less than the *Thornburg* effects represents an end run around *Thornburg* and the Court's two decade effort to create manageable standards for vote dilution cases. It also leads to unsupportable *Thornburg* majority district remedies such as the one here, which are utterly inconsistent with the less than *Thornburg* effects required by the Ninth

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[5] The USA incorrectly argues that proof of unresponsiveness is not a required element in a constitutional vote dilution case. In *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973), contrary to the USA's assertion, the court held that the absence of proof of unresponsiveness is a significant factor militating *against* a finding of vote dilution. Id. at 1306-07. Similarly, in *Rogers v. Lodge*, 458 U.S. 613 (1982), this Court held that "unresponsiveness is an important element . . . in determining whether discriminatory purpose may be inferred." *Id.* at 625, n. 9. *See also MacIntosh County Branch of the NAACP v. Darien*, 605 F.2d 753, 756 (5th Cir. 1979); *Nevitt v. Sides*, 571 F.2d 209, 229, *cert. denied*, 446 U.S. 951 (1980); *Chapman v. Nicholson*, 579 F.Supp. 1504, 1508-09 (N.D. Ala. 1984) Also, although in a Section 2 case, Justice O'Connor in *Thornburg* reemphasized the significance of unresponsiveness by noting that unresponsiveness should be required in addition to the three *Thornburg* preconditions because such evidence is "clearly relevant in answering the question whether bloc voting by whites will consistently defeat minority candidates." 478 U.S. at 100-01.

[6] Garza posits a *Section 2 intent claim*, separate from constitutional dilution claims and Section 2 results claims, that requires only proof of intent, but not effects. *City of Mobile* and the Act (including its legislative history) do not support such an odd view and no case has so held. It is both nonsensical and inconsistent with fundamental equal protection jurisprudence to suggest that plaintiffs are entitled to the relief they seek irrespective of whether they have established that the Board's actions produced a discriminatory effect. One might take the position that merely being the victim of an action that was assumedly taken for a racially discriminatory purpose is itself an injury justifying remedial action even if the injured party suffered no other injury. But even assuming that such a psychic or dignitary injury (1) actually occurred and (2) is or ought to be legally actionable, the appropriate remedy quite obviously would be some form of compensation, not a redistricting that bears no remedial relationship to the type of injury assumedly suffered.

Circuit in its affirmance of the district court's intentional discrimination determination. The Court's guidance on the proper scope of remedy is therefore warranted.

Respectfully submitted,

DeWitt W. Clinton
County Counsel of
Los Angeles
Mary Wawro
Senior Assistant
County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
Telephone: (213) 974-1811

Richard K. Simon
Lee L. Blackman
Erich R. Luschei
McDermott, Will & Emery
2029 Century Park East
Suite 3800
Los Angeles, CA 90067-2917
Telephone: (213) 277-4110

John E. McDermott
660 South Figueroa Street
Suite 2300
Los Angeles, CA 90017
Telephone: (213) 955-4600

Counsel of Record for Petitioners

John E. McDermott
Richard C. Field
Evan M. Eisland
Cadwalader, Wickersham
& Taft
660 South Figueroa Street
Suite 2300
Los Angeles, CA 90017
Telephone: (213) 955-4600

Glen D. Nager
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20005-2088
Telephone: (202) 879-3939

Counsel for Petitioners
County of Los Angeles, et al.

EVIDENTIARY APPENDIX

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The Majority Opinion of the Ninth Circuit quotes the pertinent findings of the district court on the intent issue. An examination of the evidentiary basis of the findings, however, illuminates the absence of a basis for the ultimate conclusion the district court drew from these findings — that the Board's objective was to dilute Hispanic political influence.

THE 1959 REDISTRICTING

DISTRICT COURT FINDINGS

64. Prior to 1959, District 3 included Western Rosemead and did not include any portion of the San Fernando Valley, Beverly Hills, West Hollywood, West Los Angeles, or Eagle Rock.

65. The 1959 redistricting occurred less than six months after the November 1958 general election for the open position of District 3 Supervisor. Ernest Debs, a non-Hispanic, defeated Hispanic candidate Edward Roybal, by a margin of 52.2 percent to 47.8 percent.

66. Debs received 141,011 votes. Roybal received 128,974 votes. There were four recounts before Debs was finally determined to be the winner.

67. In 1959, Debs reported in a Supervisorial hearing that he and District 4 Supervisor Burton Chase agreed to shift Beverly Hills, West Hollywood, and West Los Angeles from District 4 to District 3.

SUMMARY OF EVIDENCE

The essence of these findings is the court's adoption of an inference that the Third District Supervisor "welcomed" the addition of largely non-Hispanic territory to his district "because the move west allowed him to make District 3 more easily winnable against Roybal or another candidate who might appeal to Hispanic voters in the next election." The Garza plaintiffs' demographic expert stated, however, that the 1959 redistricting "did not affect the general representation of Hispanics in the Third Supervisorial District." (Ex. 2304, App. AA-160.)* The best the plaintiffs' expert could say was that this inference was "plausible". (RT 1/11/90, p. 56, App.A-254.) Moreover, the essential "fact" upon which the critical inference of invidious intent is premised is the conclusion that the shift "substantially" decreased the percentage of Hispanic voters in the Third District. But there is no evidence on the effect of the

*"App. AA" refers to the supplemental appendix, nine copies of which have been lodged with the Clerk of the Court. "App. A" refers to the appendix initially filed by petitioners.

68. The Board's action transferred between 50,000 to 100,000 voters from District 4 into District 3 and had the effect of substantially decreasing the proportion of Hispanic voters in District 3.

69. Dr. Kousser testified it was his opinion that Debs and Chase agreed to the transfer for two reasons. First, Chase was receptive to the agreement because it enabled him to eliminate Los Angeles City-Councilwoman Rosalind Wyman as a possible opponent in his upcoming 1960 bid for reelection. Debs welcomed the change because the move west allowed him to make District 3 more easily winnable against Roybal or another candidate who might appeal to Hispanic voters in the next election.

shift on the percentage of Hispanic voters in the Third District.

The latest Census data available at the time showed that the Spanish-surname population was a mere 6.9 percent of the County. (RT 1/25/90, App.AA-159, pp. 56-57, App.AA-41 to AA-42; Ex. 2304, App.AA-159) The percentage of eligible voters who were Spanish-surnamed would have been less. Professor Kousser, whose research was limited to documentary material, testified that he did not know "what percentage of the third district was Hispanic in 1959" and knew of no figures "on the ethnicity of registered voters during this period". (RT Vol. 1/12/90, p. 32, App.A-260). He did not even consider "looking at changes in registered voters from 1959 to 1960 to see just what actual effect in terms of actual outcomes this redistricting had." (*Id.*; App.A-260 to A-261.)

Professor Kousser also acknowledged that the area added to Democrat Debs' Third District was wealthy and liberal and that it was fair to infer that Debs would be happy to have the addition for that reason. (*Id.*, p. 29, App. A-259.)

Dr. Kousser also noted that he could find no evidence that Mr. Roybal or any other Hispanic candidate intended to mount a campaign in the coming election. (*Id.*, p. 33, App. AA-36.)

The evidence actually demonstrates that Hispanic influence was insignificant both before and after the shift. The newspaper articles of the day confirm that the Hispanic community was not a political power – Mr. Roybal's campaign was broad-based rather than focused on the Hispanic community. (Ex. 313, App. A-248.)

THE 1965 REDISTRICTING

DISTRICT COURT FINDINGS

88. The Boundary Committee [in 1965] rejected a proposal to move Alhambra and San Gabriel, areas adjacent to growing Hispanic population, from District 1 to District 3. Instead, the committee recommended a complicated two-stage change which moved Alhambra and San Gabriel from Supervisor Bonelli's District 1 to Supervisor Dorn's District 5, moved a section of the San Fernando Valley from District 5 to Supervisor Debs' District 3, and moved Monterey Park and unincorporated South San Gabriel from District 1 to District 3.

89. Dr. Kousser testified that, in his opinion, the Board avoided transferring Alhambra and San Gabriel directly to District 3 because those areas were adjacent to areas of Hispanic population concentration and were becoming more Hispanic. The more complicated two-stage adjustments permitted the addition of heavily Anglo areas from the San Fernando Valley and offset the much more limited addition of Hispanic population

SUMMARY OF EVIDENCE

These findings embody a conclusion that areas to the east of the Third District "adjacent to growing Hispanic population" were not added to the Third District because they would be sympathetic to Hispanic candidates. The essential premise upon which the inference of discrimination in these findings is based, however, is contradicted by the only evidence on the issue. First, two Hispanic elected officials testified that this part of the County was not, even years later, hospitable to Hispanic candidates. Congressman Esteban Torres, who ran in 1974 for a Congressional seat in a district which included Alhambra and Rosemead, testified that he did not do well in either. (RT 1/23/90, pp. 36-37, App. A-263 to A-265.), Los Angeles City Councilman Richard Alatorre testified that he fared poorly in Alhambra in an Assembly race in 1971. (RT 1/18/90, p. 96, App. A-267.) In addition, the evidence showed that these were not areas of significant Hispanic concentration. Alhambra was only

gained by moving Monterey Park and the unincorporated area of South San Gabriel to District 3.

approximately 6 percent Spanish-surnamed as of the 1960 Census. (Ex. 314, App. AA-144.)

The 1965 redistricting also contradicts the suggestion that Hispanic cities were not added to the Third District. Two cities "adjacent" to the eastern boundary, Monterey Park and South San Gabriel (with Spanish-surnamed populations of 13% and 15%), were moved *into* the Third District in 1965. (Exs. 94 and 314, App. AA-110 to AA-111 and AA-146 to AA-147.)

The second aspect of these findings that relates to the intent issue is the inference that areas in the predominantly Anglo San Fernando Valley were added to the Third District to dilute Hispanic voting strength. Again, there was no evidence that Hispanics had significant voting influence in the district at the time. The 1960 Census showed that Spanish-surnamed persons were less than 10% of the County's population. (Ex. 2304, App. AA-160.) Spanish-surnamed voters were an even smaller percentage.

The evidence at trial also showed that there were logical and practical reasons why areas of the San Fernando Valley

were added to the Third District. The Fifth District was over-populated; the Third was under-populated. (Ex. 459, App. AA-150.) Expansion of the Fourth District (which followed the coastline) into the Fifth District would have required a geographically extensive expansion of this already non-compact district. Further, the territory added to the Third District was a part of the City of Los Angeles and was closely linked to the part of that City already in the Third District. (RT 2/21/90, pp. 129-131, App. AA-62 to AA-64.)

In any event, the additions to the Third District were small: in the San Fernando Valley, 52,000 people were transferred; 50[illegible] people in the Griffith Park area were moved; 41,000 people in the Eagle Rock area were shifted. (Ex. 91, App. AA-103 to AA-104.)

THE 1971 REDISTRICTING

DISTRICT COURT FINDINGS

109. In 1971, District 3 lost some areas with substantial Hispanic population on its eastern border. Western Rosemead was transferred from District 3 to District 1. A census tract in the City of San Gabriel was also transferred from District 3 to District 5.

110. George Marr, head of the Population Research Section of the Department of Regional Planning testified that he was surprised by the proposal to move a substantial portion of the San Fernando Valley from District 5 to District 3. Marr described the portion of the San Fernando Valley ultimately added to District 3 from District 5 as looking like "one of those Easter Island heads." Marr developed the general feeling that Debs' representative on the Boundary Committee had requested the additional area in the San Fernando Valley because the residents of the area were regarded as "our kind of people."

112. The Court finds that the Board has redrawn the

SUMMARY OF EVIDENCE

The small part of Rosemead transferred to the First District was moved for a patently sensible reason. The whole City had long been in the First District, so when the City annexed territory, that territory was moved so that the City would not be split between Supervisorial Districts. (RT 2/21/90, pp. 145-149, 171, App. AA-70 to AA-74, AA-78.) The census tract in San Gabriel moved from the Third District to the First had a total population of less than 4,000 people. (*Id.*, p. 171, App. AA-78.)

There was no evidence that Mr. Marr's "impression" that the expansion to add Debs' "kind of people" was related to ethnicity. He said that the area added was "middle class" and "generally favorable to Mr. Debs." (RT 1/4/90, p. 9, App. AA-4.) He did not say that anyone even suggested that race or ethnicity was an issue. In fact, information on ethnic identity was not even collected. (RT 2/21/90, p. 122, App. AA-55.) Further, contrary to the suggestion that ethnicity was controlling, the expansion

supervisorial boundaries over the period 1959-1971, at least in part, to avoid enhancing Hispanic voting strength in District 3, the district that has historically had the highest proportion of Hispanics and to make it less likely that a viable, well-financed Hispanic opponent would seek office in that district. This finding is based on both direct and circumstantial evidence, including the finding that, since the defeat of Edward Roybal in 1959, no well-financed Hispanic or Spanish-surname candidate has run for election in District 3.

113. While Hispanic population was added to District 3 during the 1959-1971 redistrictings, the Court finds that the proportion of Spanish-surname persons added to District 3 has been lower than the Hispanic population proportion in the County as a whole. No individual area added was greater than 15.1 percent Spanish-surname.

114. Dating from the adoption of the County's Charter in 1912 through the 1971 redistricting process, no Los Angeles County redistricting plan has created a supervisorial district in which Hispanic persons constituted a majority or a plurality of the total population.

of the Third District to the north was driven by historical growth in the County: The greatest population growth had occurred in the northern districts, so the First and the Fifth Districts needed to give up territory by shifting their lines northward. The Second and Fourth Districts were the smallest, needing to pick up about 150,000 people each. Their lines needed to move north as well. The Third District was the least out of balance (needing to add 42,000 people – less than 1 percent of the County's population). (Ex. 99, App. AA-128 to AA-129; RT 2/21/90, pp. 126-129, App. AA-59 to AA-62.) The authors of the 1971 revisions did not seriously consider moving the Third District eastward because the move would have split the San Gabriel Valley among districts and complicated the effort to balance the rest of the districts. (RT 2/21/90, pp. 132-134, App. AA-65 to AA-67.)

The "finding" in paragraph 112 is but a conclusion that the evidence discussed above supports an inference that one motive in the redistrictings prior to 1981 was to "avoid enhancing Hispanic voting strength." The finding assumes

that a failure to engage in affirmative action is intentional discrimination. But that is not the law, and the evidence simply does not support a finding that these redistrictings were intended to discriminate against Hispanics. The findings in paragraphs 114 and 115 are make-weights on the intent issue. They merely say what did not happen, not what anyone thought.

THE 1981 REDISTRICTING

DISTRICT COURT FINDINGS

125. The individuals involved in the 1981 redistricting had demographic information available of population changes and trends in Los Angeles County from 1950 to 1980. It was readily apparent in 1980 that the Hispanic population was on the rise and growing rapidly and that the white non-Hispanic population was declining.

127. From a political perspective, since Hispanic population growth was most significant in Districts 1 and 3, if the 1971 boundaries were changed in any measurable way to eliminate the existing fragmentation, the incumbency of either Supervisor Schabarum or Supervisor Edelman would be most affected by a potential Hispanic candidate.

136. An analysis of the 1978 Supervisor election in District 3 was conducted after the Boundary Committee recommended a plan with a Hispanic population majority in District 3. The actual results of the analysis were never

SUMMARY OF EVIDENCE

These findings constitute the effort to transmute a race neutral political redistricting into something which amounts to race discrimination. There is no dispute that maintenance of the political balance of power was central to this redistricting. The dispute is over the characterization of the political stalemate, which resulted in a maintenance of the status quo, as an affirmative effort to dilute Hispanic voting power.

Three comprehensive redistricting plans were developed in 1981. One, prepared by a Hispanic advocacy organization ("Californios for Fair Representation"), increased the proportion of Hispanics in the Third and First Districts from approximately 42 and 36 percent to about 50 and 42 percent, respectively. (Ex. 226, App. AA-140 to AA-141.) Two plans developed by an independent consultant retained by the three Republican members of the Board raised the Third District to about 50 percent. In one case (the "Smith Plan"), the First District's percentage of

produced. Mr. Seymour did not rule out the possibility that he requested such an analysis and Supervisor Edelman testified that he "most probably" discussed the results of the 1978 election analysis with Mr. Seymour.

137. Peter Bonardi, a programmer with the Urban Research Section of the Data Processing Department in 1981 and a participant in the data analysis requested by Supervisor Edelman, stated that he was directed not to talk about the analysis of voting patterns and that an "atmosphere of 'keep it quite'" pervaded.

138. Supervisors Hahn and Edelman sought to maintain the existing lines. To this end, the Democratic minority agreed to a transfer of population from District 3 to District 2. Supervisor Edelman acknowledged that he and Supervisor Hahn had worked out a transfer of population from the heavily Hispanic Pico-Union area on the southern border of District 3 to the northern end of District 2.

139. Supervisor Edelman knew that if the 1971 boundary lines were kept intact, the Hispanic community was going to remain essentially the same Hispanic residents was reduced to approximately 34.7 percent from 36. (Ex. 35, App. AA-91.) In another (the "Hoffenblum Plan"), the First was reduced to about 31 percent. (*Id.*, App. AA-90.)

All three moved areas of Hispanic concentration out of the Fifth District into the Third. (*Id.*, App. AA-90 to AA-95; Ex. 427, App. AA-148.) Each of the plans reflected an effort to focus the Hispanic community in the Third District. Nevertheless, none of the plans could garner the four votes needed for adoption because no plan could satisfy any two, let alone all three, interested participants (the Board majority, the Board minority, and the Californios). Democrats Edelman and Hahn were concerned that the Smith and Hoffenblum plans focused democratic (including minority) voters in the Second and Third Districts, potentially reducing the ability of these supervisors to gain the third vote needed to accomplish the programs they supported. (RT 1/8/90, pp. 124-132, App. A-285 to A-293.) As found by the district court, the Californios plan was perceived as a means to shift the balance of power won by the Republicans in the

in terms of its division among the districts.

140. The Board departed from its past redistricting practice in 1981 and approved a contract with The Rose Institute for State and Local Government, a private entity, to perform specialized services and provide redistricting data at a cost of $30,000.

157. Smith and Hoffenblum opposed the CFR plan because the plan proposed increasing the Hispanic proportion in District 1 from 36 to 42 percent. Both Boundary Committee members perceived the CFR effort as intended to jeopardize the status of Supervisor Schabarum as well as that of the conservative majority.

158. Hoffenblum testified that one of the objectives of the Republican majority was to create an Hispanic seat without altering the ideological makeup of the Board. According to Hoffenblum, it was "self-evident" that if an Hispanic district was created in Supervisor Schabarum's district it would impact on the Republican majority.

159. The proponents of the Smith and Hoffenblum plans sought to gain areas of Republican strength such as La 1980 elections by making it more difficult for a conservative to run successfully in the First District. (RT 1/5/90, pp. 222-233, App. AA-10 to AA-21.)

Neither the Smith plan nor the Hoffenblum plan went far enough for the Californios: the Californios insisted they would accept no compromise in the effort to achieve a 50 percent majority and a 42 percent plurality in the Third and First Districts. (RT 1/4/90, pp. 193-194, App. A-282 to A-283.) Any possible compromise which might have been achieved by leaving the First District at 32 to 34 percent Hispanic while increasing the Third District above 50 percent (which had been suggested by one or more representatives of the Board majority) was stridently rebuffed as "tokenism." (RT 1/3/90, pp. 67-73, App. A-271 to A-277; RT 1/10/90, pp. 147-148, App. A-279 to A-280.) In addition, despite the Hispanic community's effort to speak with one clear voice, a single message was not perceived. (RT 1/10/90, pp. 104-106, App. AA-26 to AA-28; Hoffenblum, RT 1/8/90, pp. 45-46, App. AA-23 to AA-24.)

The result of this stalemate was an unimaginative plan

Mirada, Arcadia, Bradbury in Districts 4 and 5, while losing increasing Hispanic areas such as Alhambra or the predominantly black Compton and other liberal areas of Santa Monica and Venice.

162. Supervisor Edelman would not rule out the possibility that ethnic considerations played at least some part in the rejection by the Board majority of the CFR Plan. Moreover, the fact that CFR proposed a plan in which District 1 had a 42 percent Hispanic population was a possible basis for the rejection of the plan by the majority. Supervisor Schabarum would not accept a 45 or 50 percent Hispanic proportion in his district in 1981.

165. On September 24, 1981, prior to the Board's adoption of the challenged plan, Board members met, two at a time in a series of private meetings in the anteroom adjacent to the board room, where they tried to reach agreement on a plan.

175. The plan adopted in 1981 retained the boundary between the First and the Third Supervisorial Districts, the districts that contain the largest proportions of Hispanics. In doing so, the 1981 which accomplished, without reliance on ethnic considerations, the minimum revisions needed to achieve required population parity.

In short, the evidence shows a unified desire to accomplish the objective of increasing Hispanic political clout but an inability to find common ground on how. As acknowledged by the district court:

"It was not . . . the case of a Republican protecting [his] incumbency against the Hispanic Republican. It was the Republican protecting himself or protecting his philosophical concerns and those of the ones who elected him from a change to a Democratic seat. . . . *[I]t was not an effort by Anglos to preclude Hispanics from getting elected. . . . It was not because of a desire on anyone's part to dilute or diffuse or keep the Hispanic community powerless* [that a Hispanic district was not created]; *it was because they could not find the way to do what everyone wanted to do.* And that sometimes happens in politics." (App. A-55) (emphasis added).

Plan continued to split the Hispanic Core almost in half.

176. The Board appeared to ignore the three proposed plans which provided for a bare Hispanic population majority.

177. The Court finds that the Board of Supervisors, in adopting the 1981 redistricting plan, acted primarily with the objective of protecting and preserving the incumbencies of the five Supervisors or their political allies.

178. The Court finds that in 1981 the five members of the Board of Supervisors were aware that the plan which they eventually adopted would continue to fragment the Hispanic population and further impair the ability of Hispanics to gain representation on the Board.

179. The continued fragmentation of the Hispanic vote was a reasonably foreseeable consequence of the adoption of the 1981 Plan.

180. The Court finds that during the 1981 redistricting process, the Supervisors knew that the protection of their five Anglo incumbencies was inextricably linked to the continued fragmentation of the Hispanic Core.

181. The Supervisors appear to have acted primarily on the political instinct of self-preservation. The Court finds, however, that the Supervisors also intended what they knew to be the likely result of their actions and a prerequisite to self-preservation – the continued fragmentation of the Hispanic Core and the dilution of Hispanic voting strength.